Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)	MICS:0194/MAN (MUEI-0531.00/US)

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on _____ July 16, 2008 _____

Signature ___ /Robert A. Manware/ ___

Typed or printed name Robert A. Manware

Application Number	Filed
09/449,782	November 26, 1999

First Named Inventor	
James McKeeth	

Art Unit	Examiner
2191	Brophy, Matthew J.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
        Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
    See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
    (Form PTO/SB/96)

☑ attorney or agent of record.
    Registration number 48,758

☐ attorney or agent acting under 37 CFR 1.34.

    Registration number if acting under 37 CFR 1.34 _____

/Robert A. Manware/
_____
Signature

Robert A. Manware
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Typed or printed name

281-970-4545
_____
Telephone number

July 16, 2008
_____
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☑ *Total of ___1___ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	
James McKeeth	§	Group Art Unit: 2191
	§	
Serial No.: 09/449,782	§	Confirmation No: 6698
	§	
Filed: November 26, 1999	§	Examiner: Brophy, Matthew J.
	§	
For: COMMAND LINE OUTPUT	§	Atty. Docket: MICS:0194/FLE/MAN/TOM
REDIRECTION	§	(MUEI-0531.00/US)

PRE-APPEAL BRIEF REQUEST FOR REVIEW

      In accordance with the Official Gazette Notice of July 12, 2005, Appellant respectfully submits this Pre-Appeal Brief Request for Review. This Request is being filed concurrently with a Notice of Appeal. In the Final Office Action mailed April 16, 2008, the Examiner rejected claims 1-21, and 23-25 under 35 U.S.C. §103(a) as being unpatentable over Buxton (U.S. Patent No. 6,182,279, hereinafter "Buxton") in view of Qureshi (U.S. Patent No. 5,758,154, hereinafter "Qureshi"), in view of "The Windows NT Command Shell" by Tim Hill (hereinafter "Hill"), and further in view of Appellant's Admitted Prior art (hereinafter "AAPA"). Appellant respectfully asserts that the rejections of record are not proper and are without merit, based upon at least three clear deficiencies in the rejections, discussed in detail below.

The cited combination does not disclose "storing the command line utility output in a system storage identified by the identifier" as recited by claim 1, instructions to cause a computer to "store the command line utility output in system storage at a location identified by the identifier" as recited by claim 15, and "a system storage having a location identified by the identifier, the location identified by the identifier to store an output of the command line utility" as recited by claim 21.

In making the rejection, the Examiner parsed the claim element "storing" or "store" and "command line utility output" into the terms "store," "command line," and "utility." Appellant objects to the Examiner's parsing of the claim element. Appellant asserts that one of ordinary skill in the art would interpret the term "command line utility," in its entirety, as a single element and would interpret the modifier "command line" as further describing the term utility, because the term "command line utility" has a commonly understood meaning in the art. *See In re Cortright* ("any interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.")

In contrast to the present claims, Buxton does not discloses a "utility," or a "command line utility" as recited in independent claims 1, 15, and 21. Buxton discloses "OLE libraries" that are defined as "system-level services" that call a "WIN 32 API." Buxton, col. 8, lines 6-8. Appellant asserts that there is a clear difference between a *service* and a *utility*, especially the "command line utility" recited in independent claims 1, 15, and 21. Further, as known to those of ordinary skill in the art and as stated in Buxton, API's are "application program interfaces" which are also quite different than a utility and a "command line utility." As they are described in Buxton, neither "application program interfaces" nor "system-level services" are "executable from a command line prompt," and thus cannot be considered a "command line utility". The Examiner also cited the phrase "command line interpreter" in Buxton and the "invoking of the APIs (i.e. utilities) seen in Buxton". Final Office Action, page 18. Contrary to the Examiner's assertion, Buxton discloses a "command line interpreter" as a means for implementing a user interface, not for invoking the API's. Buxton, col. 8, lines 45-52. As stated above, the APIs are invoked by the "system level services", i.e., the OLE libraries in Buxton. *Id*. at col. 8, lines 8-12. Mere disclosure of a "command line interpreter," such as used to implement the user interface of Buxton, cannot anticipate the recited "command line utility."

Similarly, Qureshi does not disclose a "command line utility," as recited in claims 1, 15, and 21. Qureshi refers to the storing of "configuration information" in a registry by a registration routine. *Id*. Appellant notes that the "registration routine" is provided by a "registration DLL." *Id*. at col. 8, lines 18-20. Such a registration DLL is not a "command line utility," as a DLL is a "dynamic linked library," e.g., a library of routines for use by programs. As known by those having ordinary skill in the art, a DLL is clearly not a "command line utility" or even a "utility."

The Examiner stated that Hill and AAPA disclose a "command line utility" and the "output" of the "command line utility." Appellant asserts that even if this is true, neither Hill nor AAPA discloses the recited claim elements of "storing" or "store" the output of the "command line utility" in a "system storage."

In making the rejection, the Examiner proposed to combine Buxton and Qureshi with Hill and AAPA. Appellant asserts that this combination does not have any "objective evidence for the combination" other than the hindsight gained from Appellant's own Application. Appellant asserts that the Examiner is taking two references, Buxton and Qureshi, that do not disclose a "utility" or a "command line utility" and combining these references with the mere disclosure of a "command line utility" in Hill and AAPA. Appellant asserts one skilled in the art would not seek to combine references that do not disclose a "command line utility" or a "utility" of any kind with the "command line utility" of Hill or AAPA.

Further, with regard to the combination itself, the Examiner stated that the combination is obvious because an "efficient use of resources" is a "market demand." Final Office Action, page 22. Appellant objects to the Examiner's assertion that "storing" output of a script command to a registry edit command is obvious because it is an efficient use of resources. The Examiner has not responded to Appellant's argument that the combination is conclusory and only possible because of the use of impermissible hindsight. As stated in the Advisory Action, the Examiner notes that any "hindsight reasoning" cannot include "knowledge gleaned only from the Appellant's disclosure." Advisory Action page 4. Appellant believes that simply pointing to Appellant's described advantages in Appellant's own Application does not provide the objective analysis required in an obviousness determination. The assertion of an "efficient use of resources" as obvious would obviate any combination and would render any obviousness determination merely cursory and remove Appellant's ability to respond.

Additionally, in support of the combination, the Examiner stated that "use of the Hill reference in overcoming the shortcomings of AAPA, Would have been obvious to one of ordinary skill in the art at the time of invention." Appellant points out that the pipe command and a redirection file are discussed in the Background section of the present Application as having

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specific disadvantages. Application, page 1. As stated above, neither the redirection nor piping commands disclosed in Hill allow piping to a "system storage location," such as a registry. Thus, Appellant asserts that Hill, which discloses the pipe command and redirecting to a file, does not offer any techniques for overcoming those very same shortcomings described in AAPA. Thus, one skilled in the art would not use Hill, either alone or in combination with Buxton or Qureshi, to overcome the disadvantages described in the background of the present Application.

Hill does not disclose a "system storage" as recited by independent claims 1, 15, and 21

Alternatively, the Examiner also asserts that Hill discloses "storing" the output of "command line utility" in "system storage." Appellant asserts that the "system storage" of independent claims 1, 15, and 21 is not anticipated by the pipe command disclosed in Hill. As stated in the specification of the present Application, the system storage is a "system-wide storage location" that is "available to all user applications and is, furthermore, maintained by operation of the underlying operating system." Application, page 3. Appellant asserts that a file created by the pipe command cannot meet this description. Indeed, Appellant discussed the use of the pipe command and the corresponding file in the Background of the present Application. In the Background, Appellant stated that conventional techniques pipe output from the command line utility to a temporary file. *Id.* at page 1. While Appellant notes that the pipe command does not necessarily create a temporary file, as stated in the Background, "[s]ound programming practice calls for the destruction/removal of the temporary file created." *Id.* Additionally, the Background section discusses disadvantages with the pipe command and associated file, such as lack of "file creation privileges," "the disk the application has access to if full," the file name "may already by in use," the PC may be "disk-less," and "maintenance of temporary files is left to the calling application." *Id.* at pages 1-2.

In the Advisory Action, the Examiner stated that the "system storage" should be interpreted "in light of the specification" but that "limitations from the specification are not read into the claims." Advisory Action, page 3. Appellant agrees that the term "system storage" should be interpreted in light of the specification. Moreover, Appellant asserts that interpreting system storage as "a system-wide storage location" that is "available to all user applications and is, furthermore, maintained by operation of the underlying operating system" does not read in

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limitations from the specification. Appellant believes such an interpretation is consistent with what would be understood by those skilled in the art, as clearly supported "in light of the specification." Under this interpretation, Appellant asserts that Hill does not disclose the "system storage" recited in independent claims 1, 15, and 21.

None of the cited references disclose "retrieving" or "causing the application to retrieve" as recited by independent claims 1, 15, and 21

In the Final Office Action, the Examiner stated that "[a]lso, the retrieving the command line utility output has been anticipated bye Buxton (see Col. 10, lines 8-10)." Final Office Action, page 23. In the Advisory Action, the Examiner stated that Buxton teaches the "retrieving of OLE control information using the registry key (identifier)." Advisory Action, page 3.   While Appellant agrees that the OLE libraries disclosed in Buxton are retrieving information from a registry, Appellant asserts these OLE libraries, even if used in the context of an application, are not retrieving any "command line utility output" stored in the "system storage" and "identified by the identifier." The only information retrieved by the OLE libraries of Buxton is the information generated by the same OLE libraries.

Further, Appellant asserts that the Examiner's characterization of OLE libraries as an "application" that retrieves the output of a command line interpreter is inconsistent to the Examiner's earlier assertion that the OLE libraries anticipate a "utility" or a "command line utility." The OLE libraries, e.g. system-level services, cannot be both a "utility" and an "application" that retrieves information stored by the "utility."

For all of the above reasons, Appellant respectfully requests that the Panel instruct the Examiner to withdraw the outstanding rejections and allow the pending claims.

Respectfully submitted,

Date: July 16, 2008

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